

MILPERSMAN 1754-030

SUPPORT OF FAMILY MEMBERS

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References	(a) 37 U.S.C. § 403 (b) Public Law 93-647 (c) Uniform Code of Military Justice (d) BUPERSINST 1610.10E
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- Policy.** The Navy will not act as a haven for personnel who disregard or evade obligations to their legal family members. All Service members must provide adequate and continuous support for their lawful family members and comply fully with the provisions of separation agreements and valid court orders. Any failure to do so which brings discredit upon the Navy may be cause for administrative or disciplinary action, which may include the initiation of court-martial proceedings and may ultimately lead to separation from the Navy.
- Sufficient Support.** Every person has an inherent natural and moral, as well as a legal obligation, to support his or her legal family members. In many states, the failure to support one's legal family member is a criminal offense. What is adequate or reasonably sufficient support is a highly complex and individual matter dependent on numerous factors and may be resolved only in a civil court of competent jurisdiction. Some of the salient factors that may be taken into account are the pay, private income, and resources of the person and the family members; the cost of necessities and everyday living expenses; financial obligations of the family members; and the expenses and financial obligations of the person in relation to his or her income.
- Navy Limitations.** The Department of the Navy (DON) is vested neither with the statutory authority nor in possession of the facilities to adjudicate matters that are of a purely civil

nature. In all cases involving Navy Service members, it is desired that the amount of support to be given for family members be established by mutual agreement between the parties concerned or be adjudicated in the civil courts.

4. **Support**

a. In those cases where the amount of support has not been fixed by competent court order or mutual agreement, the support scale set forth below **may** be used as a guide until such time as a mutual agreement is reached or a court order obtained. This scale is intended only as an interim measure and as a guide to the extent that major factors affecting the ability to provide support, the resolution of which cannot await a decision of the civil courts or the eventuality of a mutual agreement, may be considered to affect equitable adjustments to the support scale. Because of the inherent arbitrary and temporary nature of the support scale set forth below, it is not intended to be used as a basis for any judicial proceeding. To do so would lend excessive credence to an administrative tool, which has been designed for use only internally within the Navy.

Number of family members and amount of support to be provided in the absence of a mutual agreement or court order:	
Spouse only	1/3 gross pay
Spouse and one minor child	1/2 gross pay
Spouse and two or more children	3/5 gross pay
One minor child	1/6 gross pay
Two minor children	1/4 gross pay
Three minor children	1/3 gross pay

NOTE: Per reference (a), gross pay will include basic pay and any basic allowance for housing (BAH) or overseas housing allowance (OHA) to which the Service member is entitled, but does not include hazardous duty pay, sea or foreign duty pay, incentive pay, or basic allowance for subsistence (BAS). In the case of OHA, the command may take into consideration high housing costs that are directly reimbursed but create an inequitable ratio and adjust the amount equal to what BAH would be where the receiving party lives to use that amount as part of the gross pay to make the calculation above.

b. The above guide **may** be referred to only as a basic instrument or means for determining the amount of support to be provided for a complaining family member. For example, if a Service member presently has a spouse and child and a complaint

of non-support or insufficient support is received on behalf of two children of a former marriage, in the absence of an agreement or court ruling, the Service member should provide about one-fourth of his or her gross pay for the two children of the former marriage. If the complaint is on behalf of the present spouse and child, the Service member should provide about one-half of his or her gross pay for the spouse and child. The indication of three-fifths gross pay for a spouse and two or more children is applicable only when the family members are in the same household. If a Service member has a spouse and four or more children, he or she should be advised of his or her moral obligation to contribute more than three-fifths of his or her gross pay.

5. Legal Obligation

a. The laws of most jurisdictions in the United States impose a legal obligation upon a person to support his or her spouse. Exemptions from support of a lawful spouse may be in the form of an order of a civil court of competent jurisdiction, relinquishment by the spouse, mutual agreement of the parties or a waiver of the naval support requirement granted by **Director, Dependency Claims, Navy Military Pay Operations, a division of Defense Finance and Accounting Services (DFAS)**.

b. If the Service member feels that he or she has grounds for a waiver of support of his or her spouse, **Director, Dependency Claims, Navy Military Pay Operations, DFAS**, acting under the policy guidance of Commander, Navy Personnel Command (COMNAVPERSCOM), may grant such a waiver for support of a spouse, but not children, on the basis of evidence of desertion without cause, physical abuse, or for infidelity on the part of the spouse.

c. A Service member may submit a request for a waiver of support of his or her spouse to the following address:

**Defense Finance and Accounting Service
Cleveland Center
Code PMMACB
1240 East Ninth Street
Cleveland, OH 44199**

A request must include a complete statement of the facts, including substantiating evidence and comments or recommendation

of the commanding officer (CO). Substantiating evidence may consist of the following:

(1) An affidavit of the Service member, relative, disinterested person, public official, or law enforcement officer. Affidavits of the Service member and relatives should be supported by corroborative evidence. All affidavits must be based upon personal knowledge of the facts. Statements of hearsay, opinion, and conclusion are not acceptable as evidence.

(2) Written admissions by the spouse contained in letters written by him or her to the Service member or other persons.

(3) Waiver requests submitted on grounds of physical abuse must be corroborated by evidence including the following types: medical reports; police reports; and statements from witnesses, chaplains, counselors, or social workers.

6. **BAH and OHA**

a. Family members, for whom BAH and or OHA may be payable, are defined by law. Service members are expected to comply with the terms of court orders or divorce decrees by courts of competent jurisdiction, which adjudge payments of alimony, even though BAH or OHA is not payable.

b. Entitlement of Service members to BAH and or OHA on behalf of family members is provided by statute. No Service member will be denied the right to submit a claim or application for BAH or OHA and no command may refuse or fail to forward such a claim or application. In cases involving parents, Service members should furnish an estimate of the dependency situation to the best of their knowledge. COs should not contact parents for dependency information to include in the Service member's application. This delays the application and serves no useful purpose; as such, cases are thoroughly investigated by the Navy family allowance activity. That activity obtains dependency affidavits from the parents. Any person, including a Service member or family member, who obtains an allowance or allotment by fraudulent means is subject to criminal prosecution.

7. **Desertion or Misconduct.** The duty of a person to support his or her minor children is not affected by desertion or other misconduct on the part of the spouse. The obligation to support a child or children is not affected by dissolution of the

marriage through divorce unless the judicial decree or order specifically negates the obligation of either person to support a child or children of the marriage. The fact that a divorce decree is silent relative to support of minor children or does not mention a child or children will not be considered as relieving the Service member of his or her inherent obligation to provide support for the child or children of the marriage. In many cases, the courts may not be cognizant of the existence of a child or children or may not have jurisdiction over the child or children. A commander has discretion to withhold action for alleged failure to support a child or children under the following conditions:

a. Where the location and welfare of the child or children concerned cannot be ascertained.

b. Where it is apparent that the person requesting support for a child does not have physical custody of the child or children.

8. **Adopted Child.** The natural parents of an adopted child are relieved of the obligation to support the child since this obligation is assumed by the adoptive parents. A Service member who contemplates the adoption of a child or children should be aware of the legal obligation to provide continuous support for the child or children during their minority.

9. **Noncompliance.** Noncompliance with court-ordered child support and or alimony could result in the garnishment of the Service member's pay under reference (b).

10. **Minor Children.** Service members who have minor children and who contemplate divorce should be informed of the advisability of having support provisions incorporated in the court order or divorce decree to preclude later disputes. Courts and attorneys are occasionally misled into placing provisions in separation agreements and decrees to the effect that the Service member will pay whatever amount the Military Services pay or require to be paid for support of the child or children. Ambiguous phrases should be avoided. No attempt will be made to break down any BAH with respect to how much would be applicable for a spouse, child, or other dependent. Such ambiguous orders of support or agreements will be considered the same as if they were silent with respect to the amount of support to be provided. The interests of all concerned will be better served if the amount of support to be provided is settled

in fixed terms by agreement or court order at the time of separation.

11. **Commander's Responsibilities - Non-Support Complaints Involving Enlisted Personnel**

a. The responsibility of every commander is to make sure all enlisted personnel under his or her command are informed of Navy policy and expectations regarding support of family members and the possible consequences of separation for misconduct for failure to discharge their just obligations. Married personnel at sea or stationed overseas must be counseled and encouraged to make provisions for continuous allotments to their dependents in amounts sufficient to enable their spouses to meet the family obligations at home.

b. Upon receipt of a complaint alleging that an **enlisted** member is not adequately supporting his or her lawful spouse and or children, the Service member must be interviewed and informed of the DON policy concerning support of family members. Counseling may be documented via NAVPERS 1070/613, or any other form of written counseling that specifically addresses the complaint of non-support. In the absence of a determination by a civil court or a mutual agreement of the parties, the support guide in subparagraph 4a above is applicable. Service members must be advised of their legal and moral obligations as well as their rights in the matter. Service members must be informed that their naval careers may be in jeopardy if they do not take satisfactory action. Service members may become ineligible to reenlist or extend their enlistment. If a member is not adequately supporting their dependent(s), they may be subject to administrative or disciplinary action that may result in their separation from the Navy.

c. Justifiable complaints of non-support or insufficient support against an enlisted member, with no indication of satisfactory progress toward establishing an acceptable solution, will be considered as evidence of misconduct. In such cases, action may be taken as specified in the appropriate Military Personnel Manual (MILPERSMAN).

12. **Non-Support Complaints Involving Officers**

a. Complaints of Non-support. Complaints of non-support or insufficient support concerning **officers** must be acted on by the

CO, after advising the officer concerned of his or her rights in the matter, as follows:

(1) Upon receipt of a written complaint alleging that an officer of his or her command is not adequately supporting his or her legal spouse and or children, the commander must have the officer interviewed for the purpose of instructing him or her as to DON's policy concerning support of family members. Counseling may be documented via [NAVPERS 1070/613](#), or any other form of written counseling that specifically addresses the complaint of non-support.

(2) When the complaint is received directly from the family member concerned or a legal representative, the commander must inform the other party of receipt of complaint and promptly advise the writer of DON's policy in matters of this nature, and that appropriate action will be taken.

(3) When a complaint is received via senior naval authority (usually COMNAVPERSCOM), forward the complaint to the Command whose Commanding Officer is the appropriate authority to take action. .

b. Disregard for Court Order, Mutual Agreement, or MILPERSMAN. If, in the opinion of the CO, the officer concerned has repeatedly disregarded the provisions of a valid court order, the terms of a current mutual agreement, or the provisions of this article in such a manner as to bring discredit upon the naval service, the commander may consider non judicial punishment or recommendation for court-martial.

c. Action of the Officer Concerned

(1) Response to Correspondence Alleging Non-Support. Upon receipt of correspondence alleging his or her failure to contribute adequately to the support of his or her legal spouse and or children, and on the request of his or her CO, the officer concerned may execute a statement setting forth the following:

(a) Amount and method of contributions to legal family members during the 12-month period preceding receipt of complaint,

(b) Amount being contributed monthly as of date of receipt of complaint.

(c) Amount to be contributed monthly in the future and the method by which payments will be made.

(d) If amounts are less than that provided in the support guide in subparagraph 4a above, state the reasons.

(e) Further information pertinent to the matter, which the officer desires to call to NAVPERSCOM attention.

(f) Whenever possible, a certified copy of any pertinent court order or voluntary mutual agreement should be appended.

(2) Support Guide. In the absence of a determination by a civil court or a mutual agreement of the parties, the support guide in subparagraph 4a above is applicable.

13. **Fitness and Evaluation Reports.** Fitness and evaluation reports may reflect disregard of the provisions of this article if such disregard has brought discredit upon the naval service, has interfered with performance, or raises questions concerning the advisability of promotion, advancement, or selection for specific assignments. Fitness and evaluation reports may not be used as punishment or in lieu of appropriate disposition under reference (c). Comments in fitness and evaluation reports must pay due regard to the prohibitions in reference (d) against discussing the activities of a spouse or family member. All reports mentioning non-support of family members must be treated as adverse and referred to the officer or enlisted member reported on for a statement.